

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAMONT SMITH,

Petitioner(s),

vs.

WANZA JACKSON, WARDEN

Respondent(s).

:
:
:
:
:
:
:
:
:
:
:

Case Number: 1:09cv107

Chief Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Timothy S. Black filed on August 26, 2009 (Doc. 11), to whom this case was referred pursuant to 28 U.S.C. § 636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired September 16, 2009, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to dismiss the petition (Doc. 10) is **DENIED** because the Court lacks jurisdiction over the matter.

Respondent's alternative motion to transfer (Doc. 10) is **GRANTED** and petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **TRANSFERRED** pursuant to 28 U.S.C. § 1631 to the United States Court of Appeals for the Sixth Circuit for consideration whether the district court may review the petition in accordance with 28 U.S.C. § 2244 (b).

Petitioner's motions to expand the record and for an evidentiary hearing (Docs. 2 and 3)

is **DENIED** as moot.

IT IS SO ORDERED.

—

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court